Supreme Court, U.S.
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No. 00-560

IN THE
Supreme Court of the United States

KOREAN AIR LINES CO., LTD.,

Petitioner,

v.

BRANDI WALLACE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONER

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PARTIES TO THE PROCEEDING

The following persons and entities were parties before the United States Court of Appeals for the Second Circuit:

1. Petitioner KOREAN AIR LINES CO., LTD.

2. Respondent Brandi Wallace

STATEMENT PURSUANT TO RULE 29.6

Petitioner KOREAN AIR LINES CO., LTD. ("KAL") is a Korean corporation engaged in the business of international transportation by air of passengers, baggage and cargo. KAL has no parent company but is a member of The Hanjin Group of Korea, which comprises companies under common management direction. No publicly held company owns 10% or more of KAL's stock.

PRELIMINARY STATEMENT

Petitioner Korean Air Lines Co., Ltd. ("KAL") respectfully submits this Reply Brief to respondent's Brief in Opposition.

ARGUMENT

Respondent Brandi Wallace attempts to minimize the conflict among the lower courts as to the meaning of an Article 17 "accident" and agrees that the majority decision of the court below is based on an incorrect interpretation of a treaty of the United States.[1] Respondent nevertheless argues that the Court should deny the Petition because respondent is pleased with the result below. Respondent's acknowledgment that the interpretation of Article 17 by the court below is irreconcilable with the Court's interpretation of this treaty,[2] but allegedly can be reconciled with the interpretation of the First Circuit,[3] serves to highlight that the Petition should be granted.

A. *Certiorari* Is Necessary When, As Here, Conflicts Exist in the Interpretation of a Treaty

A conflict exists "among the Courts that have addressed the issue of 'accident' in the aftermath of this Court's decision in *Saks*" (Brief in Opposition at 3), yet respondent urges the

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1. Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (1934) (*reprinted in* note following 49 U.S.C.A. § 40105) ("Warsaw Convention"). The pertinent provisions are set forth in the Appendix to KAL's Petition for Writ of Certiorari at A 31a.

2. *See Air France v. Saks*, 470 U.S. 392 (1985).

3. *See Langadinos v. American Airlines, Inc.*, 199 F.3d 68 (1st Cir. 2000).

Court to ignore the conflict. The Court of Appeals in *Langadinos* requires a causal role for there to be an "accident"; the court below, however, requires no causal role. A 12-13a. These decisions are irreconcilable as between themselves and, more importantly, irreconcilable with the history of the Warsaw Convention. *See* Petition for Writ of Certiorari at 10 n.6 & 19-25.

Moreover, respondent agrees that the decision of the court below "conflicts" with the Court's decision in *Saks*. Brief in Opposition at 3. Such a "conflict" alone warrants the granting of the Petition.

KAL does not seek the Court to "revisit and revise" the definition of "accident" in *Saks*. Brief in Opposition at 3. KAL only requests the Court to reconcile the definitions of "accident" adopted by the lower courts by addressing an issue not presented in *Saks*.

B. The Question Presented Raises An Important Legal Question of Federal Treaty Law, Not Limited to the Question of Liability for a Passenger's Sexual Misconduct

Both respondent and KAL agree that no acts or omissions of KAL caused or contributed to respondent's alleged injuries, and respondent does not claim that there is any dispute among the parties as to the facts. Thus, irrespective of whether the decision of the court below is based on a "series of 'factual assumptions' that were not supported by the record" (Brief in Opposition at 4), the Petition requires resolution of a broad issue of treaty interpretation. The question presented is independent of any "factual assumptions." Specifically, the Petition requires the Court to fulfil its role as the ultimate arbiter of the proper construction of a treaty, and thus to uphold the construction of

Article 17 as reflected in the *Langadinos* decision and the post-ratification understanding of Article 17 by the contracting parties to the Warsaw Convention.

Respondent's final argument against the issuance of a writ of *certiorari*, that the issue presented for review is too "narrow," also is ill considered. Brief in Opposition at 4. The crux of the question presented is whether a passenger-on-passenger assault (sexual or otherwise) can be an Article 17 accident in the absence of any causal role on the part of the air carrier, ostensibly basing liability under Article 17 upon the fact that there was an "occurrence" on an aircraft, the position of the Ninth Circuit which can only properly be understood as having been rejected by the Court in *Saks*. *See Saks*, 470 U.S. at 405-07. The question presented involves an inquiry into the legal meaning of an Article 17 "accident," which continues to arise in every passenger case governed by the Warsaw Convention and continues to be misapplied by the court below.

The Court should grant KAL's Petition to vacate the holding of the court below, which is contrary to the rationale and holding of *Saks*, to resolve the conflict among the lower courts and to uphold the intentions of the drafters of this treaty. The Court should ensure that the "accident" requirement of this treaty is applied as intended by the contracting parties, who for over 70 years have understood that this treaty does *not* create liability for passenger-on-passenger assaults.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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